

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No.	CAA-5= 2001-006
)		
Hutchinson Utilities)	Proceeding to Assess a	
Commission)	Civil Penalty under	
Hutchinson, Minnesota,)	Section 113(d) of the	
)	Clean Air Act,	
Respondent.)	42 U.S.C. § 7413(d)	
_____)		

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).
2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.
3. The Respondent is Hutchinson Utilities Commission, a political subdivision of the City of Hutchinson, Minnesota.

Statutory and Regulatory Background

4. Under Section 412 of the Act, the Administrator of U.S. EPA promulgated the Acid Rain Program at 40 C.F.R. Parts 72 and 75.
5. The Acid Rain Program Regulations apply to any electric generating unit.
6. The Acid Rain Program provisions, at 40 C.F.R. Part 75, require the owner or operator of an affected electric generating facility to monitor and report SO₂, NO_x, CO₂ emissions, volumetric flow and opacity data. Because this facility uses natural gas, it is exempt from the opacity monitoring requirements.

7. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for Acid Rain Program violations that occurred prior to January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collections Improvements Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for Acid Rain Program violations that occurred on or after January 31, 1997. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.
8. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.
9. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

10. The Hutchinson Utilities Commission (HUC) owns and operates an electric generating facility at 225 Michigan Street, Hutchinson, McLeod County, Minnesota (facility). This facility consists of two electric generating units.

11. HUC's facility is subject to the requirements at 40 C.F.R. Part 75. According to 40 C.F.R. § 72.7(a)(1) and (3) any electric generating facility is subject to the Acid Rain program and the monitoring requirements found at 40 C.F.R. Part 75. An exemption is granted to any unit that serves a generator smaller than 25 MW and burns fuel with an average annual sulfur content of 0.05% or less. [40 C.F.R. § 72.7(1)].
12. HUC has two boilers that serve generators of 22 MW and 42MW. Both boilers burn natural gas that has less than 0.05% sulfur content, by weight.
13. HUC has submitted a written statement that the smaller boiler is exempt from the Acid Rain Program in accordance with 40 C.F.R. § 72.7(b)(2).
14. The larger unit is not exempt from the Acid Rain Program and meets the definition of "new unit" as found at 40 C.F.R. § 72.2.
15. The facility is in an area on Minnesota that is in unclassified/attainment status for ozone.
16. 40 C.F.R. § 75.4(b) states, in pertinent part:

In accordance with § 75.20, the owner or operator of each new affected unit shall ensure that all monitoring systems required under this part for monitoring SO₂, NO_x, CO₂, opacity and volumetric flow are installed and all certification tests are complete on or before the later of the following dates ...

(1) ... for a gas-fired unit ... not located in an ozone non-attainment area or the ozone transport region, the date for installation and completion of all certification tests for NO_x and CO₂ monitoring systems shall be January 1, 1996; or

(2) Not later than 90 days after the date the unit commences commercial operation....

17. The 42 MW unit commenced commercial operation on November 3, 1994.

18. 40 C.F.R. § 75.54(a) states, in pertinent part:

On and after January 1, 1996, and before April 1, 2000, the owner or operator shall meet the requirements of either this section or § 75.57 ... The owner or operator of any affected source subject to the requirements of this part shall maintain for each affected unit a file of all measurements; data, reports, and other information required by this part at the source in a form suitable for inspection for at least three (3) years from the date of each record. ... The file shall contain the following information:

(1) The data and information required in paragraphs (b) through (g) of this section...;

(2) The supporting data and information used to calculate values required in paragraphs (b) through (f) of this section, excluding the subhourly data points used to compute hourly averages under § 75.10(d)...;

(3) The data and information required in § 75.55 of this part for specific situations, as applicable ...;

(4) The certification test data and information required in § 75.56 for tests required under § 75.20, beginning with the date of the first certification test performed, and the quality assurance and quality control data and information required in § 75.56 for tests and the quality assurance/quality control plan required under § 75.21 and appendix B of this part, beginning with the date of provisional certification;

(5) The current monitoring plan as specified in § 75.53, ...; and

(6) The quality control plan as described in appendix B to this part, beginning with the date of provisional certification.

19. Section 75.54(b) through (g) requires the owner or operator to record among other things, operating parameter records, SO₂ emission records, NO_x emission records, CO₂ emission records, opacity records, and missing data records.

20. 40 C.F.R. § 75.57 states, in pertinent part:

...On or after April 1, 2000, the owner or operator shall meet the requirements of this section.

(a) *Recordkeeping requirements for affected sources.*

The owner or operator of any affected source subject to the requirements of this part shall maintain for each affected unit a file of all measurements, data, reports, and other information required by this part at the source in a form suitable for inspection for at least three (3) years from the date of each record. Unless otherwise provided ... The file shall contain the following information:

(1) The data and information required in paragraphs (b) through (h) of this section...;

(2) The supporting data and information used to calculate values required in paragraphs (b) through (g) of this section, excluding the subhourly data points used to compute hourly averages under § 75.10(d), ...;

(3) The data and information required in § 75.55 or § 75.58 for specific situations, as applicable, ...;

(4) The certification test data and information required in § 75.56 or § 75.59 for tests required under § 75.20, beginning with the date of the first certification test performed, the quality assurance and quality control data and information required in § 75.56 or § 75.59 for tests, and the quality assurance/quality control plan required under § 75.21 and appendix B to this part...;

(5) The current monitoring plan as specified in § 75.53...; and

(6) The quality control plan as described in appendix B to this part....

21. Section 75.54(b) through (h) requires the owner or operator to record, among other things, operating parameter records, SO₂ emission records, NO_x emission records, CO₂ emission records, opacity records, diluent record provisions, and missing data records.

22. The facility did not maintain any records on operating parameters, SO₂ emissions, NO_x emissions, CO₂ emissions, and opacity. The facility did not have a monitoring plan or a quality control plan.

23. 40 C.F.R. § 75.61(a) states, in pertinent part:

The designated representative for an affected unit (or owner operators, as specified) shall submit notice to the Administrator, the appropriate EPA Regional Office and to the applicable State and local air pollution control agencies for the following purposes, as required by this part....

(2) *New unit, newly affected unit or new flue gas desulfurization system operating notification.*
The designated representative for an affected unit shall submit written notification: For a new unit or a newly affected unit, of the planned date when a new unit or newly affected unit will commence commercial operation

(i) Notification of the planned date shall be submitted not later than 45 days prior to the date the unit commences commercial operation ...

24. HUC commenced commercial operations on November 3, 1994 without submitting prior notification to the Administrator, the appropriate EPA Regional Office and to the applicable State and local air pollution control agencies.

25. 40 C.F.R. § 75.64 states, in pertinent part:

The designated representative for an affected unit shall electronically report the data and information in paragraphs (a), (b), and (c) of this section to the Administrator quarterly, beginning with the data from ... the calendar quarter corresponding to the relevant deadline for initial certification in § 75.4(a), (b), or (c).... Each electronic report must be submitted to the Administrator within 30 days following the end of each calendar quarter.

26. The first quarterly report would have been due April 30, 1995.

Count I

27. Complainant incorporates paragraphs 1 through 26 of this complaint, as if set forth in this paragraph.
28. From February 1, 1995, to present, in violation of 40 C.F.R. § 75.4(b)(2), HUC failed to monitor for SO₂ emissions and volumetric flow.
29. From January 1, 1996, to present, in violation of 40 C.F.R. § 75.4(b)(1), HUC failed to monitor for NO_x and CO₂ emissions.
30. From January 1, 1996, to March 31, 2000, in violation of 40 C.F.R. § 75.54, HUC failed to keep records on operating parameters, SO₂ emissions, NO_x emissions, and CO₂ emissions and did not have a monitoring plan or a quality control plan.
31. From April 1, 2000, to present, in violation of 40 C.F.R. § 75.57, HUC failed to keep records on operating parameters, SO₂ emissions, NO_x emissions, CO₂ emissions, and diluent record provisions, and did not have a monitoring plan or a quality control plan.
32. For the time period January 30, 1995, through December 31, 1999, HUC failed to submit quarterly reports. Each failure to submit each required quarterly report constitutes a violation of 40 C.F.R. § 75.64.

33. On October 30, 2000, U.S. EPA and HUC held a conference to discuss the September 29, 2000, Finding of Violation EPA Document number (EPA-5-00-MN-21).

Proposed Civil Penalty

34. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).
35. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$55,000.00. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.
36. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

37. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess

a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

38. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

39. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Karl Karg to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Karl Karg at (312)886-7948. Karl Karg's address is:

Karl Karg (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

40. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashiers' check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check.

Respondent simultaneously must send copies of the check and transmittal letter to Karl Karg and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

41. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 42 through 47 below.

Answer

42. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 38, above, and must serve copies of the written answer on the other parties.

43. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.
44. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.
45. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.
46. Respondent's answer must also state:
 - a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
 - b. the facts that Respondent disputes;
 - c. The basis for opposing the proposed penalty; and
 - d. whether Respondent requests a hearing as discussed in paragraph 41 above.
47. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under

Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

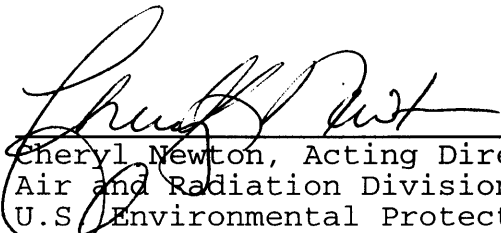
Settlement Conference

48. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Karl Karg at the address or phone number specified in paragraph 39, above.
49. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

50. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

3/29/01
Date


Cheryl Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

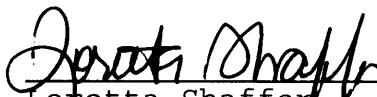
CAA-5- 2001-006

In the Matter of ~~CAA-5-2001-006~~ Activities Commission
Docket No.

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number CAA-5-2001-006 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

on the 3rd day of April, 2001.


Loretta Shaffer
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7099340000095813608